

STUDENTS AND VOTING RESIDENCY

The advent of election day registration in Idaho and how it interacts with the concept of “voting residence” has been a source of controversy in various college towns throughout Idaho.

The crux of the student registration and voting controversy is the question of whether a student can establish a residence for voting purposes, and if so, how can this be determined by registration officials.

In Idaho Constitutional (Article VI, Sec. 5) and statutory provisions (34-405, I.C.) provide that no person is deemed to have gained or lost a residence for voting purposes by reason of his presence or absence while a student at any institution of learning. These provisions have the effect of treating physical presence as a neutral factor in determining voting residence and therefore other factors must be looked at.

Section 34-107, Idaho Code, defines residence for voting purposes:

(1) “Residence,” for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

(2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

This section in essence sets forth the concept of domicile i.e. principal or primary home or place of abode of a person.

Idaho courts have held that “for a change of domicile to occur, the fact of physical presence at a dwelling place and the intention to make it a home must concur and when such domicile is established, it persists until another is legally acquired. *Kirkpatrick v. Transtector Systems* 114 Id. 559.”

The rules of the State Board of Education (IDAVA 08.01.04.005.08) define domicile as follows:

“Domicile” means an individual’s true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter.

The above mentioned materials require that college students must establish, as with all other voter registration applicants, that the locale within which they seek to register and vote is their domicile i.e. that they are living in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time, in the new location.

Some of the factors which may be relevant in determining whether domicile has been established for voting purposes by a student as well as any other applicant, are as follows:

- (1) Has the applicant registered to vote elsewhere?
- (2) If married, where does his or her spouse reside?
- (3) Where does the applicant keep his personal property?
- (4) Does the applicant have any community ties to the locale he claims as his domicile – membership in church, social or service clubs, etc?
- (5) Where does the applicant maintain his checking and saving accounts, if any?
- (6) Where does the applicant pay taxes, and what address did he list as his residence on his last income tax return?
- (7) What is the residence listed on the applicant's driver's license?
- (8) If the applicant owns an automobile, where is it registered?
- (9) If the applicant is employed, where is his job located?
- (10) Does the applicant live year round at his claimed domicile, or does he divide it elsewhere? If it is divided, how much time is spent elsewhere and for what reason?
- (11) What residence does the applicant list on his selective service registration, hunting or fishing licenses, insurance policies, or other official papers and documents which required a statement of residence or address.

Any close case (one which could go either way) should be resolved in favor of the applicant because of the important fundamental right registration officials are dealing with.

Students should not be registering and voting in their college locale simply because they failed to register and vote at their true domicile. Registering to vote is a serious matter which, if abused, can subject individuals to criminal penalties. It should be noted that there is no federal right to vote anywhere in the United States for the office of President. State laws control registration and voting and State residency requirements must be met.

Every effort should be made to inform all students about the residence requirement for voting and to provide information concerning other states' procedures and deadlines. We need and want these students to vote at their legal domicile.